

UNIVERSITY OF KENTUCKY
COLLEGE OF LAW

PRACTICE COURT MANUAL

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*These two - have been begged by
many - schools - but I kept them*

W. L.



INTRODUCTION.

It is now generally conceded that a law school course is not complete unless it provides for special instruction in procedural law work, so planned as to give the students an intimate knowledge of the mode of procedure in conducting court cases when engaged in actual law practice; but the schools are not agreed as to what this work should consist of, nor the method of teaching it. The plan of instruction that nearest approaches the real work in actual practice should be most acceptable.

This practice court manual gives an outline of the work as conducted in this school, and is submitted as a systematic and orderly plan for teaching students the application of the laws and rules of procedure in Kentucky. At least two weekly recitation periods of one hour each throughout the senior year are devoted to this work.

The course of study of the first and second years of this law school, or its equivalent, should be completed before beginning this practice work, and should include a practical course in such work as is usually done in the law office and outside of court procedure, such as is taught under the title Office Practices in the second year of this law school, including administrative duties of the lawyer, drafting of such legal documents as contracts, bills, deeds of conveyance, mortgages, trust deeds, assignments, powers of attorney, partnership agreements, articles of incorporation, wills, abstracting of titles, administration of estates, etc.

The work of the practice court should be conducted by an instructor of recognized legal attainments whose experience in general law practice has been extensive. He should also be well acquainted with the rules governing the ethics of the profession, and should see that they are impressively taught in connection with all the court proceedings. The rules of practice adopted by the State of Kentucky control the proceedings in this course and each student is provided with a copy of the

Kentucky Codes of Practice, and also has ready access to all statute laws of the state that may be used in this connection. The instructor will by lectures, actual court work and other means, direct the work of the class over the practice course, explaining each step as it is taken. As it is understood that this manual is not official and is designed only as a guide to direct the way in part and to make suggestions, each student is required to cite the provisions of the practice code, the statute laws or decided cases in support of the correctness of his work. By this process the students soon become sufficiently familiar with the practice code, statute laws and decided cases to be able without special instruction to conduct the work assigned them. The blank leaves put in the manual are used for keeping a record of the citations.

In arranging for this course a court room is provided and equipped with the furnishings of a regularly constituted court, so that all work may proceed impressively. The court is organized with the instructor acting as presiding judge, with a complete staff of court officers composed of members of the class. The duties of each officer are taught by requiring the members to alternate in official service. Court formalities and the rules of professional ethics are strictly observed. A large part of this work requires extensive use of the law library and the students obtain valuable experience in looking up the law needed in their court work.

Purpose and Arrangement of the Work. This course is designed primarily to equip the student for the law practice in Kentucky, but it is so conducted and explained that a student should experience but little difficulty in following the rules of practice in any state in which he might locate. It carries him through the most vital phases of the procedure in both uncontested and contested cases. A large part of the lawyer's work in court is upon uncontested matters which are easier handled than the contested, consequently (after treating a few special subjects) the simplest uncontested actions are filed and worked out in all possible ways to completion, which lays a

comprehensive foundation for the later and more complicated work. The plan as set out in this manual separates the course into five divisions, each providing for a distinct part of practice work, and leads the students by easy gradation through the different divisions until the practice before the court of last resort is reached and fully taught.

At intervals the students attend the sessions of the State and Federal Courts held in the city of Lexington, for observation work. Opportunity is also given for spending some time in the offices of practicing lawyers in order to gain some acquaintance with the office work and the manner of handling business by the active practitioner.

The training here provided for is systematically taught and is sufficiently diversified to enable the students when the course is completed to handle matters of procedure in actual practice without experiencing the usual embarrassment that confronts the beginning lawyer.

FIRST DIVISION.

The work of this division consists first of a study of the organization of the courts of this state, the jurisdiction of each, how change of venue is obtained, and such other matters preliminary to the handling of cases in court that may appear advisable. The work will continue by the prosecution of uncontested cases, each of which is based on a statement of facts and carried through all possible steps from the filing of the petition to the entering of the final order. The cases used are several in number and begin with a case in which as little difficulty is met as in any kind that may be filed. As the work proceeds the cases are more difficult and the work more extended. The procedure in these cases is set out in detail by an explanation of each step that might possibly be taken, but each student is required to search out the applicable practice code provisions and statute laws, and give the proper citations on the blank leaves in the manual. By this method they learn the pathway over which they must proceed and at the same time familiarize themselves with the procedural laws and how to find and apply them. Each student is required to prepare a petition in each case, prepare the summons, mark the return on same, write proper court order when returned, prepare the judgment and all necessary court orders. They will prepare the papers in all subsequent steps that could possibly be taken in such a case, such as handling execution, replevin bond, indemnifying bond, claimance bond, forthcoming bond, levy, appraisalment, sale, sale bond, execution on sale or replevin bond, etc.

In this division each member of the class works on the same statement of facts, but only one complete set of papers is made out and kept on file in court and proper orders made as the case proceeds. Each student keeps his own private file for his own use. He uses it when called upon to recite in class. At each recitation period the work continues up to the point to

which the class has been able to prepare, and is so continued from time to time until the case is completed. The students alternate in conducting proceedings in court under the supervision of the instructor (presiding judge) who sees that the work is correctly done, is understood by the class, and that all laws and rules used in support of each step taken are properly cited. At the conclusion of a case each student must have written out a complete record of all the proceedings accompanied by the proper supporting citations.

This first division gives very elementary instruction in practice, and the cases being written out and fully explained in the manual confine the students' efforts in the main to finding and applying laws and rules in proof of their work. Since the provision of the manual is not official, but only a guide with suggestions, the value of this elementary work is appreciated as the students proceed further in the divisions that follow, in which each student is given separate statements of facts on which he must proceed by working out his cases unaided, except to the extent that he may help himself under the provision of the law of his case which he is able to find. The following cases with the suggestions and notes accompanying each are used.

Case No. 1, Common Law Action on Note. The first action to be filed in court, in which all steps will be taken from the filing of the petition until the final order is made, is upon a plain promissory note, which action can be conducted with as little difficulty up to and including the judgment as in any other kind that may be filed. The code provisions are very clear, and can be easily followed to the point of entering judgment. A note in the following language may be used:

\$500.00. Lexington, Ky., January 1, 1920. Four months after date I promise to pay to John Doe, for value received, the sum of Five Hundred Dollars, with interest from date at the rate of six per cent per annum until paid.—Richard Roe.

A copy of the note will be given to each member of the class, and they will do the work throughout. Each for himself will examine the law of procedure, prepare a petition, and one will be filed with the clerk of the court. He must see to it that each officer who may perform any duty in connection with the case does his work as required by law.

The next step after filing the petition, and noting the same of record by the clerk, will be the issuing of the summons, which must be issued in duplicate, signed by the clerk officially and placed in the hands of the sheriff to be served upon the defendant. This summons will notify the defendant of the pending of the action against him, giving the name of the court, the style or title and nature of the action. The sheriff will find the defendant and hand him the duplicate copy, and will write his return upon the back of the original in substance as follows: "Executed the within summons upon the defendant Richard Roe, by handing him a true copy of same," giving the date of the service and then sign the return in his official capacity. The summons must be returned to the office of the clerk of the court and by him filed, and a record of the return made.

All cases must pend for a certain length of time after the service of the summons, in order that the defendant may have time to prepare his defense, if he has any to make, before a judgment can be entered. In this case, the defendant having been found within the county, that period is ten days. When judgment is due, the attorney representing the plaintiff will, when the case is called, address the court and ask for a default judgment, or he may call up the case, if it is not called upon the docket by the judge of the court. No defense being made, a default judgment will be entered against the defendant for the amount of the debt, interest and the costs of the action.

After the rendition of judgment the defendant is given the period of ten days in which he may pay off the judgment debt and avoid further costs, or he may during that period

replevy the debt upon the docket, which consists in his executing a bond with good security to be approved by the clerk of the court for the full amount of the judgment debt with interest from date payable to the plaintiff within three months after the date of the bond. Such a bond has the force and effect of a judgment and will be filed with the clerk.

If at the expiration of the ten days, the judgment debt has not been paid or replevied, the plaintiff as a matter of right is entitled to an execution to enforce its payment, which can be obtained by plaintiff or his attorney upon application to the clerk. If it can be shown to the court that the rights of the plaintiff will be prejudiced in the collection of his judgment debt by the delay of the ten days' period, the court will upon motion order an execution to be issued forthwith by the clerk who will sign it officially and place it in the hands of the sheriff for collection.

The sheriff when receiving an execution will enter on the back of same the day and date he receives it, giving the exact time of day, and will sign the entry officially. The making of this entry is made necessary, for the reason that the delivery of the execution into the hands of the sheriff from that moment creates a lien upon all the property owned by the defendant within the county not exempt from execution, and notice of this execution lien must be noted of record in the county clerk's office. The sheriff may have other executions in his hands against the same defendant, and if not enough property can be found to satisfy all executions he may hold, they will be paid in the order of their receipt by him, giving priority to the first and then on down to the last. The execution will give the sheriff a certain period in which he must proceed to collect same. While in his hands, defendant or any one for him may pay it in full, or he may replevy it in the hands of the sheriff at any time before sale by executing a bond with good security, to be approved by the sheriff and made payable to the plaintiff, bearing interest from date, and payable three months from the date it is made. If paid, the sheriff will of-

officially mark the execution paid in full and return it, together with the money, to the clerk's office, where the return will be recorded and the money properly distributed. If replevied the sheriff will officially make his return on the execution, which, together with the replevin bond, he will return to the office of the clerk, who will file and make a record of the execution return and of the replevin bond. If the execution is neither paid nor replevied, the sheriff will proceed to find property belonging to the defendant not exempt from execution, out of which he may make the execution debt; he must subject personal property if any can be found, before the real property of defendant will be liable.

The sheriff may at any time before he proceeds to satisfy the execution by levy or sale of the defendant's property, demand of the plaintiff an indemnifying bond, to the effect that plaintiff will indemnify him against any loss or damage he may sustain by reason of the levy or sale of the property of defendant, if it should turn out that the property was not subject to the levy or sale. He will ask this, however, only in cases where he is in doubt as to his right to levy or sell. If the plaintiff refuses to execute the indemnifying bond the sheriff may refuse to proceed further, and after marking his return upon the execution to the effect that he demanded the bond and plaintiff refused to execute it, may return the execution to the clerk's office, thereby being released from further duty under the execution.

If the sheriff proceeds and finds property subject to execution, he will levy on same by taking into his possession if personal property and hold it until he disposes of it by sale. Should a third party lay claim to the property levied upon by the sheriff, he may possess himself of the property by executing a claimance bond. If defendant desires to retain his property which has been levied upon, and will deliver it to the sheriff on the day of sale, he may do so by executing to the sheriff a forthcoming bond, to the effect that he will produce the property or its value to the sheriff on the day of sale.

Before making either of these bonds the sheriff will cause three disinterested housekeepers of the county who, after being sworn by him to fix a fair valuation upon the property, will appraise same and write and sign their appraisement. If sale is to be made the sheriff will proceed to sell the property by first advertising the time, place and terms of sale by posting notice, if personal property, for at least ten days next before the day of sale, in three public places in the vicinity of the place of sale; if real property, the notices of sale will be posted at the courthouse door (the place of sale) and three public places in the vicinity of the property to be sold, for at least fifteen days next before the day of sale. Before selling real property he will cause the same to be appraised by two disinterested intelligent housekeepers of the county, whose appraisement will be written and signed by them after being sworn by the sheriff. He will sell the property and take bond with good security from each person who may be a purchaser at the sale, for the amount of his purchase together with interest from date, made payable to the plaintiff three months after date of sale. These bonds have the force and effect of a judgment. The sheriff will then make his return upon the execution, by stating all that was done, beginning with the levy, giving its date and description of the property levied on, making of such bonds as may have been entered into, the posting of sale notices, how many of same, where posted and for how long a time, the appraisement before sale, who were the purchaser or purchasers, the price or prices obtained, and the execution of sale bonds. All of which will be written out and signed by the sheriff, which together with the appraisements and bonds taken by him will be returned with the execution to the clerk's office. The clerk will file the papers and make proper record of each.

If a replevin bond was executed by the defendant, either before the clerk of the court or with the sheriff, the defendant, his surety, or any one for him, may pay it on or before its maturity; if not so paid an execution may be issued upon it

after maturity by application to the clerk, against all persons whose names appear on the bond. If a sale bond was executed it will be treated in the same way. These bonds having the force and effect of a judgment, bind all parties whose names appear on them, the same as if they had been parties to the action and judgment entered regularly against them. The execution issued upon any one of these bonds will be placed in the hands of the sheriff for collection, and he will proceed against any one or more of the parties mentioned therein, in the same way that he would proceed under an execution issued on the original judgment, except that no right of replevy is allowed, and a sale of property if made must be for cash. The sheriff will return the execution with the money to the clerk's office, where the clerk will make the proper records and cause the money to be distributed to the proper persons.

Suggestions and Notes. As a guide to the class, as this work proceeds in this case, the following table which gives an outline of the procedure in the order in which the steps will be taken, should be kept on the blackboard in the Practice Court room :

1. Preparation of petition.
2. Filing of petition and issuing of summons.
3. Handling of summons by the sheriff.
4. Judgment.
5. Payment or replevy of judgment on the docket.
6. If judgment not so paid or replevied, issuing of execution.
7. Payment or replevy of execution debt in hands of sheriff.
8. Indemnifying bond.
9. If execution not paid or replevied, sale of property.
10. Forthcoming bond, and effect if property not produced, claimance bond.
11. Return of execution showing what was done (no property found.)
12. Effect of replevin bond or sale bond.
13. Payment of such bonds or execution on same.
14. Procedure under such execution.
15. Final steps.

All work should be done in regular order and form, as each step is taken. Close study of the practice code and all applicable statute law must be understood by each student. Each student should write a complete record as the work progresses, and present his work in class, to be used in connection with the lectures and tests that may be used by the instructor during the class period. The student must be made to fully realize the importance of each step taken, and the result of mistakes; that such steps as may be taken in the court must be supported by a corresponding written order upon the court records in the case. Instruction should be given as to when the duties of an officer may be performed by his deputy; in the absence of the regular officer, what other officer may perform the duties; to what extent an officer is responsible for the failure to perform an official duty, and the procedure against him; the procedure when the defendant against whom summons is directed is not found; how the appearance of defendant may be entered to the suit filed against him; how to proceed when no property is found out of which an execution debt may be made; how levy of execution is made and duty of plaintiff in pointing out property of defendant upon which levy may be made; what is meant by property exempt from execution sale and of what it does consist; how defendant should proceed if sheriff should subject to sale exempted property; how to proceed in the event defendant fails to produce the property under a forthcoming bond; procedure in damages on an indemnifying bond; duty of sheriff in proceeding under an execution against property that is indivisible; how to proceed on a claimance bond; duty of sheriff when he sells property that satisfies the execution debt only in part, or produces more money than enough to pay the debt; how to assess costs in the case. A knowledge of these suggestions in connection with this case will be far reaching in the preparation of the student for working out under the code of practice and statute laws, all other steps not herein specifically mentioned, that may arise in common law actions, and the collection of judgments that may be rendered in such cases.

Case No. 2, Equity Action on Lien Note. The second action to be filed in court in which all steps will be taken, from the filing of the petition until the final order is made, is upon a

plain lien note, which action can be conducted with as little difficulty up to and including the judgment, as in any other kind of equity action that may be filed. The code provisions are very clear and can be easily followed to the point of entering judgment. Like Case No. 1, (a common law action) it is more difficult after reaching that point, and the procedure in an equity case from and after the entering of the judgment is altogether different. For the purpose of this action the following note is used:

“\$500.00. Lexington, Ky., January 1st, 1920. Four months after date I promise to pay to the order of John Doe, the sum of Five Hundred Dollars for value received, with interest from date at the rate of six per cent per annum. This note is secured by a mortgage lien on real property of even date herewith.—Richard Roe.”

The plan of work will proceed as in Case No. 1. Each member of the class will be given a copy of the note, and to secure the payment of the note will be required to prepare a mortgage properly acknowledged, upon a tract of land, giving description of same and then prepare a petition, one of which will be filed with the clerk of the court. Careful attention must be given all applicable rules and laws as the case proceeds. Each student will prepare a full set of all papers filed, orders made and work performed by each officer of the court who may be officially connected with the case which he will keep for his own use. The next step after filing the petition and noting it of record by the clerk, will be the issuing of the summons which must be issued in duplicate signed officially by the clerk and placed in the hands of the sheriff for service on the defendant. The sheriff will execute the summons by handing a copy to the defendant, who will thereby be notified of the filing of the action, in what court, by whom instituted, and the nature of the action. The sheriff will then properly endorse his return upon the summons, and return it to the office of the clerk, where it will be filed and proper record made.

Judgment will be due after the expiration of ten days from the date of service of the summons on the defendant, unless the defendant was summoned elsewhere in the state than in the county where the action was filed, in which event the time must be twenty days, if served out of the county where the case is pending, the service must be made by the sheriff of the county where defendant may be found. It must be remembered that the jurisdiction in such actions (being *in rem*) lies with the court of the county in which the property is located. When judgment is due it may be obtained as before explained in Case No. 1, upon the call of the docket by the presiding judge, or upon motion by plaintiff's attorney; no defence being made, judgment will be entered against the defendant for the amount of the debt, interest and costs, and with it a lien will be adjudged upon the mortgaged property, and a sale of the property ordered.

Defendant is allowed to pay the judgment in full and thereby end the proceedings; but if not so paid, a copy of the judgment and order of sale will be made by the clerk and placed in the hands of the Master Commissioner of the court, whose duty it is to proceed under the order to sell the property described. He will as directed in the order advertise the time, terms and place of sale, together with a description of the property and the amount of money to be produced by the sale, by posting a notice at the court house door and three other public places in the vicinity of the property to be sold, unless otherwise ordered, and also in a county newspaper if so ordered. Before making the sale he will cause the property to be appraised by two disinterested housekeepers of the county, who will be sworn by him to faithfully perform their duty as such appraisers and they will write out and sign their appraisement.

The Master Commissioner will sell the property upon credit as specified in the order of sale, and take from the purchaser a sale bond with approved security made payable to himself or the plaintiff for the purchase money, and bearing interest from day of sale. In counties of more than 150,000 inhabitants the

bond is made payable to the clerk of the court. The Master Commissioner will then make out his written report, giving each step taken by him under the order, which together with the appraisement and sale bond he will file with the court. When the report is filed, the court will fix a time for it to pend before its rejection or confirmation. This period is usually three days unless the court for sufficient reason fixes a shorter or longer period. This period is given in order to permit exception to be filed to the report by any one having an interest in the report whose rights might be prejudiced by its confirmation. If no such objection is filed the court will at the expiration of the period confirm the report. If exceptions are filed, the court will fix a time for a hearing in open court on the exceptions; proof may be offered to show why the report should not be confirmed. Should the court upon the hearing refuse to confirm the report, an order will be made to that effect, and the Master Commissioner will be ordered to re-execute the order of sale, unless it appears that the Master Commissioner for some reason should not execute the order, in which event the court will appoint a special commissioner to do the work under the order. The execution of the order will proceed as originally directed. When the report is confirmed proper orders will be made and the report and sale bond recorded.

The sale bond reported by the master commissioner will remain filed until its maturity, when the purchaser or any one for him may pay off the bond, under the orders of the court and the money distributed to the persons entitled thereto. The money may be paid before maturity if the court so orders. If the bond is not paid in full at maturity the master commissioner will be ordered to collect same, make distribution of the money and make report of same to the court. The bond having the force and effect of a judgment an execution may issue on same and the sheriff will proceed to collect it, as explained in the procedure on an execution on sale bond in Case No. 1.

The purchaser will be entitled to a deed to the land bought at the commissioner's sale, at any time after the confirmation

of the report of sale, which deed is obtained upon motion before the court. The court will order the commissioner to make the proper deed which will be acknowledged by the commissioner in open court, and after being approved by the presiding judge, will be certified to the proper office for record. Should the purchaser for any reason not be able to obtain peaceful possession of the property bought, he may on motion in court secure a writ of possession, which will be issued under the order of the court, placed in the hands of the sheriff, who will by force if necessary, put the purchaser in possession, write his return on the writ showing what he did and return it to the clerk to be filed and proper order made. All steps being completed an order will be made filing the case away.

Suggestions and Notes. As a guide to the class as the work in this case proceeds, the following table, which gives an outline of the procedure in the order in which the steps should be taken, should be kept on the blackboard in the practice court room.

1. Preparation of petition in equity on the mortgage note.
2. Filing of petition and issuing of summons.
3. Handling of summons by the sheriff.
4. Judgment and order of sale.
5. Making copy of order of sale for master commissioner.
6. Procedure of master commissioner under order.
7. Preparation of sale notice and steps incident thereto.
8. Appraisement of property.
9. Making sale and taking sale bonds.
10. Preparation of master commissioner's report.
11. Filing of report for exceptions or confirmation.
12. Steps necessary if sale confirmed. (Execution may issue).
13. Steps necessary if sale set aside.
14. Distribution of money and deed to purchaser.
15. Writ of possession.

All work should be done in regular order and form, as each step is taken. Close study of the practice code and all applicable statute law, that may be used in connection with this case, must be studied by each student. Each student

should write a complete record as the work progresses, and present his work in class to be used in connection with the lectures that may be made by the instructor during the class periods. The official duties of the court officers up to the entering of the judgment are the same as in case No. 1. The class should be instructed on the differences in a common law and equity summons; on the procedure if debt is paid before a judgment; the issuing of execution after order of sale is executed and confirmed; the appointment of special commissioners; what steps taken when not necessary to sell all property in lien for the satisfaction of the judgment debt; if not enough property to pay judgment debt; right of redemption and sale of same for debt; the difference in the terms of sale of personal property and real property; when sale bonds may be paid before maturity; difference in steps taken before the court and those before the clerk when court not in session; steps taken in court must be supported by corresponding orders; what kind of complaint may be set up in exceptions to the confirmation of the master commissioner's report of sale; to his report of collection and distribution of the proceeds of the sale or other reports he may be ordered to make; how exceptions are disposed of; master commissioner's responsibility for failure to take proper sale bond or for failure in any other official act; how lien may be retained upon the land sold under the judgment for the payment of the purchase money in addition to the bond; prepare court deed to purchaser; how to assess the costs of suit; what is meant by filing case away and how same may be reinstated on the docket; and any other material matter that may appear to the instructor as advisable.

Case No. 3. Action on Note and Account. This action will be filed in court upon a promissory note made in the same language as the one found in Case No. 1, and in addition to the indebtedness on the note, a debt on account between the same parties will be set up, setting out several items with the date and value of each. Summons will be issued and returned. The petition with its allegations will be set forth as the law requires and no defence will be offered, judgment by default will be entered, and the procedure thereafter will be the same as in Case No. 1.

Suggestions and Notes. The questions to which attention must be given in this case, will be whether or not this is a common law or equity action and why; can the two claims be joined in the same action; should the petition be paragraphed, and the rules governing the question; should the account be filed as an exhibit and also set out in the body of the petition; does interest run on the items of the open account; how to plead if the note was paid in part or the account paid in part; how specifically should the prayer of the petition set out the alleged claims of the plaintiff; should the petition be verified; how to proceed if any part of the plaintiff's claims are contested and what court order should be made; what should be done if plaintiff should tender payment of the uncontested part of the claims and effect of such tender; could the uncontested and the contested parts be separated so as to take judgment on the uncontested part and proceed to its collection, and let the contested part pend; could the contested part be arbitrated or withdrawn; such other questions as may appear to the instructor as pertinent.

Case No. 4. Action for Debt and General Attachment.

For the purpose of this case, action will be filed on the same kind of note as used in Case No. 1, to be accompanied by the necessary procedure to subject by attachment the property of the defendant to the payment of plaintiff's claim. The petition will be filed and summons issued, and accompanying the petition an affidavit for attachment must be filed setting out the specific requirements in the code, together with one of the grounds of attachment therein set out. Before an order of attachment will be issued by the clerk, plaintiff must execute an attachment bond with good security to be approved by the clerk, to the effect that plaintiff will pay to defendant such damage as he may sustain by reason of the issuing of the order of attachment if the same is wrongfully obtained. The order of attachment will be issued in duplicate and signed by the clerk, which together with the summons will be placed in the hands of the sheriff for service. He will hand the copy of attachment to the defendant in the same way he serves the summons. He will at the same time levy the order of attachment

upon such of the property of defendant as he may find subject to attachment, taking personal property first. If before the sheriff levies upon defendant's property he may be in doubt as to the property being subject to attachment, he may demand an indemnifying bond of plaintiff, same as is explained in the procedure under execution in Case No. 1. If no such bond is executed he will proceed no further with the attachment. Should he attach personal property, he will take it into possession and hold it subject to the orders of the court. If real property is levied on it will remain subject to the order of court. He will return the summons showing the service, and also return the order of attachment, but he must show by endorsement, not only that he handed a copy of same to the defendant, but that he levied it upon the property of the defendant, describing same, and that he has the property in possession; unless in case of personal property the defendant or some other person executes a forthcoming bond or a bond to the plaintiff for the payment of his claim, should the attachment be sustained, which may be done in this case, in which event he will return the forthcoming bond or other bond with the order of attachment. The period of ten days from date of service must then be given defendant to prepare any defense he may make in the case. When that period expires judgment will be due, and if no defense is offered, a judgment will be entered as in Case No. 2, and in addition to the formal order entering judgment, it will embrace an order sustaining the grounds of attachment, and also an order directing the master commissioner of the court or the sheriff as the court may determine, to sell the attached property. The order of sale will be written out as required in Case No. 2, when property is ordered sold by the court, and the procedure under the order will also be the same as in Case No. 2.

Suggestions and Notes. Other questions of procedure might arise in connection with an attachment, and should be taught while treating this case, using the practice code as far as its specific provisions are applicable. If this is

an equity case, why; difference between general and specific attachment; give special attention to the various grounds of attachment; the form of order of attachment; when attachment may be obtained, whether after action has been previously filed; can affidavit for order of attachment be put in the petition, if so, how treated; who may make the affidavit; can attachment be obtained during the vacation of the court; indemnifying bond, how made to sheriff and upon what grounds may defendant claim damages under the order of attachment; can the attachment be dropped or dismissed and the case proceed; duty of plaintiff to find defendant's property for sheriff and what property may be attached; how levy is made; duty of sheriff in caring for property while in his hands; procedure if perishable property is attached; why specific order should be made sustaining attachment when judgment is entered; can execution issue on the judgment; forthcoming bond and procedure if property not produced; procedure if not enough property is attached to pay the judgment debt; procedure if too much property is attached to pay the debt; if indivisible property in which another may have an interest is attached; can subsequent attachments be issued in the same case; procedure if attachments in other cases are levied upon the same property; if property is within the jurisdiction of the court and defendant has gone beyond the jurisdiction; if defendant within the jurisdiction and the property taken beyond. Such other suggestions as may appear pertinent.

Case No. 5. Action and Attachment Against Non-Resident Defendant. This action will be filed on same note with property within the jurisdiction of the court and the defendant a resident of Paris, Missouri. The case will be commenced as in Case No. 4, by filing petition, with affidavit setting forth the proper grounds for attachment, and an affidavit for appointment of warning order attorney to represent the defendant who will be brought before the court upon constructive service. The attachment bond will be executed, summons and order of attachment issued as in Case No. 4, and an order will be entered by the clerk appointing a member of the bar as warning order attorney, whose duty it will be to correspond with

the non-resident defendant and notify him of the pendency of the action and the nature thereof, if defendant can be found; if not found the warning order attorney will show that he made an effort to find him. The sheriff will not be able to find the defendant and he will return the summons, endorsed showing the fact that he was not found. He will serve the order of attachment by delivering the copy to the person who has the property in possession and so make his return. A notice in duplicate, will be issued by the clerk to be served upon the attorney appointed to act under the warning order, which will be served and returned by the sheriff as he would in case of a summons. The sheriff will attach and hold the property subject to the order of the court. The warning order attorney will proceed in the discharge of his duties and make a written report to the court showing what he did under the order. The defendant being before the court only upon constructive service, the case must pend for the period of sixty days from the date the notice was served upon the warning order attorney. At the expiration of that period there being no defense a judgment and order sustaining the attachment and ordering the sale of the attached property will be entered, and the property sold as set out in Case No. 4.

Suggestions and Notes. In this case the whole law as to constructive service should be made clear, additional features should be treated, such as: why should summons be issued, as defendant is beyond the jurisdiction of the court; can personal judgment be entered; result if property was taken beyond the jurisdiction of the court; when is a lien created upon the property of the defendant in an attachment case and effect of same; how personal appearance of defendant may be entered and its effect; from what source does the sheriff receive pay for keeping attached property and his responsibility in caring for the property while in his hands; effect of levies upon the sale of more property than necessary to pay the judgment, debt and costs; if not enough property is sold to pay the judgment debt and costs, what are the future rights of the plaintiff and how should he proceed to secure the re-

maining part of his claim; can execution issue; could the case be filed away and at any time thereafter be revived and placed upon the docket for future procedure; how proceed if property attached is perishable; make allowances and assessment of costs and such other steps as may appear advisable.

Case No. 6. Action and Attachment Bringing Garnishee Before Court. This action will be filed upon the same note, and it is assumed that the defendant is within the jurisdiction of the court; that he has no tangible property, but has money deposited in the Fayette National Bank, which plaintiff desires to attach and subject to the payment of his claim. The procedure in filing the action will be the same as in Case No. 4, except that the original copy of the order of attachment will be endorsed to the effect that the Fayette National Bank is made garnishee therein, and directed to report what funds if any it has in its hands belonging to the defendant. The bank may or may not be made a party to the suit. Processes of court will be served and returned as in Case No. 4, and the garnishee must be served with a copy of the order of attachment with its endorsement and the sheriff's return must show that fact. When the period of ten days has elapsed after the service of the processes judgment will be due, and if no defense is made judgment and order sustaining the attachment will be entered. The bank as garnishee will on or before the expiration of the ten days' period file a written report showing what funds if any it had in its hands at the time of the service of the order of attachment upon it. Whatever funds may have been found in its hands will be ordered paid into court for the benefit of plaintiff. Costs will be assessed and money distributed.

Suggestions and Notes. As to what would be the procedure if defendant were a non-resident of the state; if a resident of a county in the state other than in the county in which the suit is filed; if tangible property was also found; when lien attached to funds in the bank; if defendant contests on grounds that the money is exempted property; if garnishee, failed to report; if report is not

satisfactory to plaintiff; if execution may issue and when; if so issued and no property found to pay the judgment debt, can plaintiff afterward proceed by attachment; if so how. Particular attention should be called to the attachment procedure on a return of nuda bona.

Case No. 7. Action for Partition of Lands. This action is filed for the partition of a tract of land belonging to the estate of John Doe, deceased. It is assumed that the decedent left surviving him his widow, Mary Doe, who files the action, and four sons, John, James, William and George, each son being over twenty-one years of age. The tract to be partitioned contains three hundred acres on which the widow resides. The jurisdiction of such a case must be ascertained, then petition filed, summons issued and returned by sheriff. At the expiration of the period allowed the defendants to prepare a defence, none being made, a judgment and order of division of the lands will be entered. Care must be taken in the preparation of the order which will appoint three disinterested housekeepers of the county, who will under specific directions set out by the order, serve as commissioners to make the division. A copy of the order will be prepared and given to the commissioners, who being sworn to discharge their duty according to law, will obtain the services of a surveyor, unless one of their number is qualified, and go upon the lands and make the division as directed. The order will show what preferences if any the widow is entitled to and after her share is set off the remainder will be divided equally between the four sons, estimating in setting off the various parcels, the quality, quantity and value of each. The commissioners will cause each parcel to be carefully surveyed and platted. They will determine which lot each will take or may let the sons each draw for the lot he will get under the division. The commissioners will then make out and sign a written report of their work done under the order embracing a survey of each parcel as allotted; giving location and a description by metes and bounds, and setting out any easements or other privileges they may pro-

vide for. The report will be filed in court and left open for exceptions or confirmation and will be treated in the same way the master commissioner's report is treated in the sale of land in Case No. 2. If the report is set aside, the commissioners will be ordered to re-execute the order of division, unless the court should see fit to appoint a new set of commissioners. Any subsequent report will be treated in the same way until one is made and confirmed. Upon the confirmation of the report, a commissioner will be appointed to make deeds as explained in Case No. 2, and when properly acknowledged, the deeds will be certified to the proper office for record, and the case filed away.

Suggestions and Notes. When and where should this action be filed; if filed in the county court for what reasons may it be transferred to the circuit court; could the partition of lands be made by consent of the parties, if so, how; for what reasons may the lands be adjudged indivisible, and if so, what is the procedure for making the division among the parties; what preferences are given the widow in the division; what procedure if a lien exists on the land; if the widow has an undivided interest in the land in her own right; what restraint, if any, is imposed upon the widow in the treatment of the land allotted to her as dower; the procedure if she exceeds her rights in the use of the lands; can she dispose of her interest in the lands; fix allowances and assess costs; how proceed if one of the defendants is a non-resident, one nineteen one fifteen and the other twelve years of age; the infants residing with the mother who files the suit; if one of the infants is a non-resident and has no guardian; or if he has a guardian; if land indivisible without impairing its value; if land must be sold how treat the widow's right of dower; if she wants the present value in cash as her own, how determined; if one of the parties die pending the suit, without child or children, but leaving widow; and other suggestions that may seem pertinent.

Case No. 8, Action to Settle an Estate. This case is set forth in the following language: John Doe died intestate leaving surviving him his widow Mary Doe, and three chil-

dren; John, 22 years of age; James, 17 years of age, and Kate, 8 years of age. The decedent left a farm containing one hundred acres worth ten thousand dollars, on which he resided at the time of his death, and on which there exists a mortgage debt of one thousand dollars, due Richard Roe. The decedent also owned four horses, six cows, a lot of farming implements, household goods, corn, wheat and oats. The tract of land by reason of its size cannot be divided into parcels without impairing its value, but must be sold as a whole. The infant children have no guardian. All parties reside on the farm within the jurisdiction of the court. Take all steps to settle this estate and make distribution to the parties entitled thereto.

The first step to be taken will be the qualifying of a personal representative to settle the personal estate of the decedent. The law will be examined to ascertain who may qualify, and then proceed in the county court to qualify the personal representative, by entering the order showing the name of the person selected, who executes bond as such and takes the oath of office. Appraisers must be appointed to list and fix the value of each article of personal property left by the decedent. The appraisers must be disinterested housekeepers of the county and three in number, any two of whom may act. After being sworn to faithfully discharge the duties of their office, they will proceed to appraise the personal property of the decedent, which will be pointed out to them by the personal representative, by first valuing the articles to be set off to the widow and infant children as exempted property, as provided under the statutes. They will also list and value the remaining personal property which shall be sold. They will then make out their report, by giving the exempted property in one list and the remaining property to be sold in another list; signing the report they will file same in the county court clerk's office for record. The personal representative will then proceed to sell such personal property as comes to his hands for sale, by first properly advertising the time, terms and place of sale in such a way as may be advisable. He will

on the day of sale make a list of all property sold, to whom and at what price, and file report of same in the said clerk's office for record. He will be charged with and made accountable for the amount of the sale bill; in default, his bondsman must pay. The personal representative will then, if not having previously done so, advertise for and collect all claims against the estate, and see that each is verified as required by law. When the claims are collected he will, after paying all preferred claims, distribute pro rata whatever money he may have left, upon the claims filed with him and then make his settlement with the county court. There not being enough money realized from the sale of personal property to pay the indebtedness of the estate, he may file an action in court to settle the estate, which will require a sale of the real property. The petition will be prepared, and for the purposes of this action he will associate with himself as plaintiffs the lien holder and the adult son, if willing; if not, they will be made defendants. The widow and the infant children for the purposes of this action will be made defendants. The petition will be filed and summons issued as required by law in such a case, and the sheriff will hand a copy to the widow for herself and also an additional copy to her for the infant under fourteen years of age; also hand a copy to the infant over fourteen years of age and make his return to the proper office. One of the plaintiffs may, or in their absence from the county, plaintiff's attorney will file an affidavit in court for the appointment of a guardian *ad litem* to represent the interest of the infant defendants. The guardian *ad litem*, being a regular member of the bar, will perform his duties as required by law and make a report as such to the court. An order will be made referring the matter to the master commissioner for proof of the claims against the estate of the decedent, and to settle the accounts of the personal representative. He will under the order collect all outstanding claims against the estate not found in the hands of the personal representative, see that all claims are properly verified, make the settlement of the accounts

of the personal representative, charging him with all money received and giving him credit for all money properly disbursed and make report of this to the court. The action will then stand for submission to the court for judgment and order of sale of the real property. When the same is entered of record the master commissioner will sell the real property and report the sale to the court in the same way as provided in Case No. 2. The two reports of the commissioner will pend for exceptions or confirmation. After disposing of any exceptions that may be filed, the reports will be confirmed, unless a report is set aside, in which event the order will be re-executed until such a report will be made that the court will confirm. An order will be made for the collection and distribution of the sale bonds, as shown in Case No. 2, and the master commissioner will also collect any undistributed funds that the report may show to be in the hands of the personal representative. After paying the costs of the action, which includes allowance to the master commissioner, plaintiff's attorney and guardian *ad litem*, he will distribute the balance by first paying the indebtedness of the estate, and then distribute to the widow and the three children of decedent. Statutory guardian must be appointed for the children who are under twenty-one years of age, and the money due them paid to such guardian. The procedure in qualifying such guardian and his duties as such must be worked out. The action will then be filed away.

Suggestions and Notes. What are the preferred claims in the settlement of a decedent's estate; is it proper to make a distribution of any money that may be in the hands of the personal representative before the sale of the land; if the personal representative had only \$400.00 in his hands as the proceeds of the sale of personal property, and the \$1,000.00 lien claim was filed with him and a number of general claims also filed, how should the \$400.00 be distributed; could any general claim holder file a suit for the settlement of the estate; could the lien holder file a suit on his claim other than for settlement of the estate; how will the money to which the widow is entitled be held; could she claim homestead or its value in the real property; could the pres-

ent worth of her dower or homestead right in the real estate be paid to her absolutely; if so, how calculated; could one of the infants by his guardian sue for a settlement of the estate; if the widow should sue how the infants should be brought before the court; how action brought if one of the infants were a non-resident and if no widow; if one of the children were dead leaving children; if one should die with or without children pending the action; could an interest be sold pending the action; if there were two tracts in different counties of the state; could the case be reinstated on the docket, and other suggestions that may occur to the instructor.

Case No. 9. An Action for Divorce. A divorce action will be brought upon the following facts: John Doe and Mary Doe married in Louisville, Ky., January 4, 1902, and for ten years were residents of Lexington, Ky., up to January 10, 1912, when he abandoned her and went to Paris, Mo., and ever since that time he has been residing there. Three months ago she moved to Georgetown, Ky. This action must be filed by her in court in this state. The defendant must be brought before the court as provided by law in such cases, and the necessary proof prepared as required by law in this state, and judgment by default entered.

Suggestions and Notes. The divorce laws of the state will be studied including the settlement of property rights of the litigants, the custody of the infant children, questions of alimony *pendente lite*, alimony for the maintenance of the wife or infant children and enforcement of its collection, and assessment of costs; could any of these sums be collected of defendant who is brought before the court on constructive service; what steps could be taken should personal service afterwards be had; the instructor will suggest other steps that may be taken in such cases.

Case No. 10. Proceeding by Injunction. A case will be prepared which involves the question of an injunction growing out of the following facts: John Doe has erected and is operating a slaughter house near the residence of Richard Roe. Roe

wants the business prohibited. If a cause of action lies, take the necessary steps to prevent it.

Suggestions and Notes. Carefully look up the law touching the subject of injunction and including mandatory injunction, restraining order and use of each, modification of, dissolution and damages; mandamus and prohibition; what the result if injunction sustained; if dismissed; how further steps may be taken by the defeated party, and such other questions that might possibly arise in actions of this kind.

Case No. 11. Action of Forcible Detainer. For the purposes of this action, it is assumed that John Doe rented a home from Richard Roe for the period of one year, and at the expiration of that period, Doe declined to vacate the premises. The proper steps must be taken to dispossess him.

Suggestions and Notes. What should be done if Doe should die immediately after the expiration of the lease; if Doe disappeared leaving his family in possession; Roe's remedy if rent is not paid; what property subject to debt for rent; jurisdiction of the case; appeal and traverse bond; what redress has Roe for damages done to the premises by Doe; result if Roe fails in his effort to dispossess Doe; other possible questions that might arise?

SECOND DIVISION.

This division of the work, beginning December 1 and continuing to the end of the first semester, consists of a more extensive handling of uncontested actions, and each student works on a separate statement of facts. He takes his facts, studies the law of his case, and reaches his own conclusion as to the proper course to pursue. If it is found that an action should be filed to secure the rights of the client, he then proceeds with the action in court, making a complete record of all steps necessary to be taken in the case beginning with the petition up to and including the entering of judgment, and must cite the laws and rules of procedure relied upon in support of his work. If no action can be maintained he must so report. The procedure following judgment has been thoroughly taught in the previous division, and on account of the uniformity of the work following a judgment, it is not here extended.

As the court convenes at each class period, a student is called upon to state the facts of his case, and carry the steps in the action as far as he has been able to prepare up to that time; another is called upon and proceeds likewise with his case, and this plan continues until each member of the class has conducted a part of the work of his case. At each class period this process is continued until the assigned cases are completed. Other cases are assigned and worked out in the same way until the end of the semester is reached. As no two students work on the same case in this division of work, each is required to not only thoroughly work out his own cases, but he must observe closely all steps in cases conducted by other members of the class, each of whom has a different problem to solve. The instructor does not interpose his suggestions in the progress of a case as to the correctness of the procedure unless the student conducting his case or the other members of the class as critics, fail to direct the proper course.

A list of cases to be worked out in the practice court, which are so selected as to cover as much of the field as possible over which the practicing lawyer will work, is made out from time to time by the instructor as he may deem advisable. The following list is suggested:

No. 1. John Doe holds a note against Richard Roe for \$500, dated January 1, 1920, due one year after date, interest from maturity. Roe has no property except an interest with his brother, Joe Roe, in a tract of land in this county which is being held by their mother, Mary Roe, as dower. The land is bounded on the north by lands of John Jones, west by lands of John Brown, south by lands of John Smith, east by the lands of John Black. Roe so conceals himself that a summons cannot be served upon him. Doe wants to attach and make his money. Take all steps necessary in the case to make the collection.

No. 2. John White has been a partner of Richard Smith in the grocery business and they have become enemies. White wants to sue for a settlement. They owe debts to John Smith, John Jones, John Brown, John Black, John Gray and others. Take all steps necessary to settle the partnership. It is conceded that a balance will be left on hands for distribution between the partners.

No. 3. Thos. Fay holds a note for \$1,000, dated June 1, 1920, due one year after date, interest from date, signed by Frank Gray. This note is secured by a mortgage on a tract of land containing 60 acres, in Fayette County, Ky., bounded on the north by the lands of John Smith, on the west and south by the lands of John Brown, and on the east by the lands of John Black. Gray died, leaving a widow, Mary Gray, and an infant child, John, aged 16, and an infant child, James, aged 9, all residents of Fayette County, Ky. It is conceded that decedent left personal property only sufficient to supply the exemptions for the widow and infant children, and a small surplus will be left out of the proceeds of the sale of the land, after paying the mortgage debt and the costs of the action.

No guardian has been appointed for the infant children. Take all necessary steps to collect the mortgage debt.

No. 4. J. T. Pope was security for Geo. Black on a note for \$500, dated January 1, 1920, due one year after date. Pope paid off the note as security and finds that Black owns six horses in Fayette County, Ky., where he resides, and he wants to collect the debt. Black is concealing the horses for the purpose of shipping them out of the state and selling them, not leaving enough property to satisfy the debt. Black is supplied with all legal exemptions. Take all steps to make the debt out of the sale of the horses.

No. 5. J. W. Day holds a note for \$500, dated January 1, 1920, due one year after date, interest from date, signed by Wm. Tate and John Brown, and secured by a mortgage lien upon one hundred acres of land in Fayette County, Ky., which is owned jointly by Tate and Brown, and bounded on the north by the lands of John Brown, on the east by the lands of John Jones, on the west by the lands of John Smith, and on the south by the lands of John Smith. Wm. Tate is now a resident of Paris, Mo., and John Brown lives in Henry County, Ky. Take all steps to make the debt out of this land.

No. 6. C. T. Frost holds a mortgage on six horses owned by R. T. Titus. The amount of the debt evidenced by note is \$300, with interest from date, January 1, 1919, which note is past due. The horses have been sold to John Brown without the knowledge or consent of Frost, and Titus was paid in full for same. Titus has no other property. All the parties live in Fayette County, Ky. Take all the steps to collect the debt.

No. 7. Mark Monroe as sheriff of Fayette County, Ky., made his bond as collector of the county revenues for the year 1920, with the Baltimore Surety Company, of Baltimore, Md., as his surety. He collected ten thousand (10,000) dollars in revenues belonging to the county and defaulted to the extent of three thousand (\$3,000) dollars. Suit must be brought to collect the unpaid balance. Take all steps to secure the said balance.

No. 8. John Doe holds a note against Richard Roe for \$1,000 past due with interest from January 1, 1918. Doe holds a mortgage on two horses to secure the debt but finds the horses are not worth more than \$400. He finds the only other property owned by Roe is six mules worth \$600, which he is about to sell for shipment to New Orleans. At present both parties and all the property are in Lexington, Ky. Roe is not entitled to exemptions. Take all the steps to make Doe's claim.

No. 9. James Jones was married to Marry Jones in Lexington, Ky., January 1, 1918. After living together one year he left his wife, and has not been heard from since that time. She wants a divorce and wants the custody of their infant daughter, Sarah. Take all steps to secure the desired relief. After judgment is obtained James Jones returns to Kentucky and resides in Scott County and owns one horse. Mary wishes to make the cost of the divorce suit by sale of the horse. Take all the steps necessary to obtain the divorce and to collect the cost.

No. 10. W. T. Asher has a one-third interest in a tract of 300 acres of land in Fayette County, Ky., bounded as follows: On the north by lands of John Smith, on the west by lands of John Jones, on the south by lands of John Brown, and on the east by lands of John Gray. The other two-thirds are owned by his brothers, James and William. John Asher wants his one-third cut off for him. Take all steps necessary to have this done.

No. 11. Taylor Fry holds a note for \$500, dated January 1, 1919, signed by S. T. Lee, and due June 1, 1920, with interest from date. Fry finds that Lee, whose wife is named Mary, owns a one-fifth undivided interest in a tract of land in Fayette County, Ky. The other four-fifths are owned by Lee's brothers, James, Thomas, William and Robert. The whole tract contains 20 acres, bounded on the north by the lands of John Smith, on the west by the lands of John Jones, on the south by the lands of John Brown, on the east by the lands of John Black. Lee owes much more than the value of his in-

terest in the land, and Fry wants to proceed at once to secure his claim out of that interest. Take all steps to secure the debt.

No. 12. The Louisville and Nashville Railroad Company is preparing to construct a branch road in Fayette County, Ky., from Lexington to Cave Springs and has surveyed a line through the lands of John Brown. He refuses to let the company pass over his lands. The company wants to force its way. Take all steps to force through the lands of Brown.

No. 13. A. B. King died intestate in Fayette County, Ky., and left surviving him his wife, Mary King, and two infant children, James, 16 years of age, and William, 12. Each resides with the mother in Lexington, Ky., and they have no guardian. The decedent left one hundred acres of land in Fayette County, Ky., bounded as follows: On the north by the lands of John Brown, on the east by the lands of John Smith, on the south by the lands of John Jones, and on the west by the lands of John Jones. The widow wants the lands divided. Take all the steps to have the land divided according to the rights of the interested parties.

No. 14. John Page holds a note for \$1,000, signed by Richard Fite, due January 1, 1920, interest from maturity. Fite has no property of any kind except a town lot in Lexington, Ky., known as lot 6, in block B, in the plat of the city, against which the city of Lexington holds a lien for \$200 for street improvements. Fite also has due him \$300 for work and labor performed for John Brown. All the parties reside in Fayette County, Ky. Page wants to secure his claim out of the proceeds of the town lot and the money due Fite from Brown. Take all necessary steps to collect it.

No. 15. Samuel Pore holds a note for \$500, dated January 1, 1920, due one day after date with interest from date at the rate of six per cent per annum, signed by M. A. Rose and secured by mortgage on tract of land in Franklin County, Ky., containing 100 acres; possession is in the wife of Rose, whose first name is Mary, who signed and acknowledged the mort-

gage; she holds the lands for life, with remainder to John Smith. All parties live in Lexington, Ky. The land is bounded on the north by lands of John Smith, on the east by lands of John Jones, on the west by the lands of John Brown, and south by the lands of John Black. Take all steps to collect the money out of the land.

No. 16. T. A. Smith, at the age of fourteen, selected T. L. Lloyd as his guardian in the Fayette County Court. Settlements were regularly made by the guardian, as required by law, and the last one was made March 1, 1921, when Smith reached the age of twenty-one years. Smith examined the settlements and found that there was a credit of \$200 given the guardian, which was improper, and also the guardian was given an allowance that was excessive to the extent of \$300. The guardian refuses to correct the settlements. Take the proper steps to secure the rights of the ward.

No. 17. J. C. Forrest holds a note against L. E. Ard for \$500, dated January 1, 1920, due one year after date with interest from date. Ard is a resident of Paris, Mo., and is now in this, Fayette County, Ky. His wife, Mary, is dead, but they have one child, William, an infant four years of age, residing with John Brown, his guardian, in Columbia, Mo. His wife owned at the time of her death a tract of 100 acres of land in Kenton County, Ky., on which they resided at the time, bounded on the north by the lands of John Jones, on the west by the lands of John Smith, on the south by the lands of John Black, on the east by the lands of John Gray. Take all the necessary steps to collect the debt out of the tract of land.

No. 18. Tom Riley as tenant of J. O. Black cultivated and matured a crop of tobacco worth \$2,000 on the lands of Black. He has no other property subject to execution. Riley, a single man, is about to sell and carry away the tobacco without paying the rental of \$1,000, which is past due, and the further sum of \$200, rental due three months hence. Take all the steps necessary to secure the payment of all the rent money.

No. 19. F. O. Scott holds a deferred payment note against M. T. Rankin for one thousand (\$1,000) dollars, dated March 1, 1914, and due December 1, 1918, with interest at six per cent from date. This represents the last payment on a tract of land in Fayette County, Ky., bounded as follows: On the north by the lands of John Smith, on the west by the lands of John Jones, on the south by the lands of John Brown, and on the east by the lands of John Gray. There is also an unpaid deferred payment note of one thousand (\$1,000) dollars of the date of the above note, bearing interest from date and due December 1, 1917, and represents the second deferred payment. This note has been sold by the holder to John Armstrong, and a lien on the land secures both notes, but it is conceded that the proceeds of the land will not pay both notes by \$400. Take all necessary steps to secure the rights of each of the note holders.

No. 20. James Williams married Mary Williams, and died intestate leaving surviving him his widow and two children, John, aged 7, and James, aged 17. Both reside with their mother and have no guardian. James Williams left no personal property, but owned 200 acres of land, bounded on the north and east by the lands of John Jones, and on the south and west by the lands of John Smith. The land is located in Fayette County, Ky.; the widow and children reside upon it. The widow wants dower allotted and the remainder of the land sold to pay the debts of the estate. It is conceded there will be a balance of \$4,000 after paying all claims. Take the steps necessary to secure the relief sought by the widow and make proper disposition of the \$4,000.

No. 21. John Doe died intestate leaving surviving him his wife, Mary Doe, and son, John, 18 years of age, who has no guardian, but resides with his mother in Fayette County, Ky. Mary Doe qualified as administratrix, and after selling the personal property which was left over and above exemptions, there was not enough left to pay the debts of the estate by \$1,000. A suit is necessary to sell the lands belonging to the

estate of the decedent to pay the debts. He owned a tract of land in Fayette County, Ky., bounded as follows: Beginning at a stone on Cane Ridge, thence N. 62 E. 21 poles to a stone in the dirt road, thence N. 15 W. 15 to a stone, thence S. 16 E. 71 poles to a sugar tree, thence S. 41 W. 81 poles to the beginning, containing 60 acres. It is conceded that there will be a balance of \$5,000 in cash left for the widow and child. Take all steps to sell the land, pay the debts, pay the share of the widow to her absolutely, and the balance to be reinvested for the benefit of the infant.

No. 22. John Thomas executed his note to Richard Cary for \$500, dated January 1, 1920, due one year after date, interest from maturity. Both are residents of Fayette County, Ky. Thomas is the owner of five head of horses worth \$150 each, which is all the property of any kind he owns. He has a family consisting of his wife and six children; two of the sons are over 21 years of age. Thomas is preparing to move his family and his horses to the state of Ohio. Cary wants to collect his debt. Take all steps in this case to collect the debt.

No. 23. T. A. Fry, an infant 12 years of age, residing in Richmond, Ind., owns a tract of land in Fayette County, Ky., bounded on the north and east by lands of John Smith, and south and west by lands of John Jones, containing 100 acres. He has a guardian with whom he resides, named John Gray. Gray finds that the lands are not productive and wants to sell same and reinvest the proceeds in lands in Indiana near Richmond. Take all steps necessary to have this done.

No. 24. John Doe wants to force a passway for his own convenience through the farm of Richard Roe to enable him to reach the public highway; he has no other outlet. Roe objects but will make no defense in court. Doe has a legal right to the relief sought. Take all the steps necessary to secure the road.

No. 25. J. F. Craft and J. W. Sparks, who owe no partnership debts, own in partnership a horse and saw mill. The

saw mill is composed of a traction engine of the Huber make, two saws, two trucks and log carriage. They have dissolved partnership and cannot agree as to division of the property. It is necessary to file action in court. Take all steps necessary to settle the partnership.

No. 26. Frank Hite has a tenant, S. A. Jones, upon his farm, who owes him \$900 in rent which is due. Jones has a family composed of a wife and four infant children, and Jones has 10,000 pounds of tobacco, which he has raised upon Hite's farm. He has sold it at its full value and is now delivering it to the purchaser, John Smith. The purchase price is \$1,000. Jones has two horses and two cows, which is all the property he possesses outside of the tobacco. Hite wants to collect his debt. Take all the steps in the case to collect the debt, having regard for legal exemptions.

No. 27. John See has in his possession a black horse 7 years old, the property of Richard Fee, and refuses to permit Fee to get the horse. Take all the necessary steps to secure to Fee his legal rights.

No. 28. T. T. Glave is tenant of R. V. Smith, and has sold his hemp crop amounting to 10,000 pounds, worth \$1,500, and delivered it to John Smith, the purchaser, but no part of the purchase money has been paid. This crop is mixed with other hemp crops and is in the hands of Smith, who is insolvent. Glave owes Smith one thousand (\$1,000) dollars rent past due. Take all steps three days after the sale and delivery that may be necessary to collect the rent.

No. 29. Thomas Fite wants to close a public county road near his home which it is conceded is no longer necessary for public use. The roadway is described as beginning at the east bank of Elkhorn Creek, thence a distance of one mile between the farms of John Roe and Richard Roe to the Versailles turnpike road. Take all the steps to close the road.

No. 30. John Doe is in the possession of a tract of 100 acres of land in Fayette County, Ky., and holds a general warranty deed for same. Richard Roe claims an interest in

the farm, but Doe is satisfied that Roe has no interest. As this alleged interest clouds Doe's title, he wants the claim silenced. Take all steps to clear the title. It is conceded that Roe will file no answer in court.

No. 31. J. T. Stone died in Fayette County, Ky., the county of his residence, leaving a will, in which he disposes of all his property consisting of personal property and a farm containing 100 acres of land located in said county. He left surviving him two sons, James and William, and his father, Thomas, and his mother, Sarah. The will makes provisions for the building of a parsonage for the first Baptist Church, and the language following this special bequest is so expressed as to leave it doubtful whether or not some part of the estate shall pass to the father and mother. Take all steps necessary to ascertain the meaning of the will that the estate may be distributed according to its terms.

No. 32. James Hunt died in Fayette County, Ky., leaving a will in which he provides for his widow, Mary, but leaves an amount not equal to that which she is entitled to under the law; she is dissatisfied with the provisions of the will. There are two children surviving, John 19 years of age, and Frank 4 years of age, both living with the mother and have no guardian. The widow wants such rights as are allowed her by law. Take the steps necessary to secure such rights for her.

No. 33. James Allen executed his note to John Day for \$1,000.00, dated January 1, 1920, due twelve months after date with interest from date at the rate of six per cent per annum. This note was made payable at the Fayette National Bank, Lexington, Ky. Before its maturity it was endorsed to John Brown and by him to the Chemical National Bank of New York City. After its maturity it was endorsed by said bank to John Gray, of Lexington, Ky., and by him to John Jones who brings this suit March 15, 1921. Each endorsement was made in blank. Take the necessary steps to collect the debt.

No. 34. C. T. Dunn holds a note against Richard Hall, dated March 1, 1919, for \$1,000.00, bearing interest from date at the rate of six per cent per annum, due one year after date. Hall died intestate January 15, 1920, leaving surviving his widow Mary, and one son Thomas, 10 years of age, who resides with his mother in the home left by the deceased in Fayette County, Ky. John Brown is statutory guardian for the infant. The decedent left no property but his home and the plot of land on which it stands, worth \$1,000.00. Dunn wants the note collected. Take all steps to secure such rights as he may be entitled to assuming that the legal rights of the widow and child will be claimed.

No. 35. John Stites qualified January 1, 1920, as administrator of the estate of C. Cole, with John Brown and James Smith as his bondsmen. He sold the personal property of the decedent and paid all outstanding indebtedness against the estate in full, except Thomas Gray, who holds a note against the estate for \$500.00, dated January 1, 1919, due one year thereafter with interest from date. The administrator has no more money in his hands than is necessary to pay the widow, Mary Cole, her exemptions. The creditors paid were Thomas Smith, James Gray and John Stites, who is administrator. Take steps to secure Thomas Gray his legal rights.

No. 36. The Lexington Rolling Mills Company incorporated refuses to declare a yearly dividend upon its stock, consisting of fifty shares of \$500 each, although the net profits for the year justify a dividend of ten per cent upon all the stock. The charter provides for the declaring of annual dividends. All the stockholders, except John Lay, are indifferent as to the declaring of the dividend. Lay wants action filed to secure his dividend. The other stockholders are Richard Roe, Thomas Brown, James Smith and William Jones. Take steps to secure such rights as Lay may be entitled to.

No. 37. John Poe, as county judge of Fayette County, Ky., refuses to have the proper orders entered upon the record books of the county court, the result of the election held under

what is known as the County Unit Law, prohibiting the sale of whisky, for which the election was held January 15, 1921. The majority of the votes were cast in favor of such prohibition. Take the necessary steps to have the orders made complete.

No. 38. Tom Gray is in possession of a tract of land in Fayette County, Ky., claiming it as his own, which is bounded on the north by the lands of John Smith, on the south and east by the lands of Thomas Brown and on the west by the lands of William Gray containing 100 acres; Gray holds a deed made to himself by Thomas Armstrong, January 1, 1907, which deed recites that Armstrong retains a lien upon the land for \$1,000.00 purchase money. . This land was conveyed January , 1905, to Armstrong by Milton Thomas, and the deed to Armstrong shows an unsatisfied purchase money lien of \$500. This land was owned by the State of Kentucky and a patent was issued by the state May 15, 1903, to Richard Roe, but was illegally made out; and at that time Thomas was in possession of the land. The patent and all deeds are properly recorded and each deed warrants the title generally. Armstrong is dead and left surviving him his widow, Mary Armstrong, and one son, Frank, who is over 21 years of age. Prosecute action to secure the lands if possible for Gray.

No. 39. The Louisville and Nashville Railroad Company by contract agreed for sufficient consideration to maintain an overhead bridge so as to connect the two parts of John Fay's farm which were separated by the construction of the railroad line. The company for more than six months next before this date has failed and refused to properly maintain the bridge so as to make it safe for public travel as originally intended. Secure for Fay such rights as may be due him.

No. 40. The Indiana Mercantile Company, incorporated under the laws of the State of Indiana, and now doing business in Indianapolis, purchased a car load of apples from John Doe, of Knoxville, Tenn., which car load of apples is worth \$500, and is now attached to a train of cars standing on the

side track at the station in this county. The company is indebted to Richard May on account to the amount of \$500 now due. No member of the company or agent of same is in this state. The apples, if not sold within thirty days, will perish. There will be no term of circuit court having jurisdiction of the case for sixty days. Take all steps necessary to secure May's claim out of the apples.

No. 41. The Friendship church congregation unincorporated is indebted to Wm. White in the sum of \$500 by account now due for fixtures placed in the church, and which has been regularly used for four months. The members of the congregation are A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P. A, B and C are the regularly elected trustees of the congregation. The trustees without specific authority from the congregation mortgaged the fixtures to Richard Roe. Take all steps necessary to collect White's claim.

No. 42. John Doe died leaving surviving him his widow, Mary Doe, one son James, 22 years of age, and two other sons, Thomas and Frank, each under 14 years of age, who reside with their mother upon the homestead which has been allotted to her as her dower lands containing fifty acres. The widow is cutting and selling valuable trees from the dower lands and converting the proceeds to her own personal use. James Doe objects to the cutting and selling of the trees. Take all steps necessary to secure such rights as James Doe is entitled to.

No. 43. Geo. Cray has been released from the payment of his debts by bankruptcy proceedings in the United States District Court of Eastern Kentucky. At the time of the release he was indebted to John Brown in the sum of \$500, to Thomas Smith \$800, and Samuel Jones \$2,900, each of whom in the final distribution was paid fifty per cent of his claim. R. T. Berry, who had no notice of the bankrupt proceedings, holds a claim against Cray for \$1,000 and has been paid nothing on his claim. Take such steps as may be necessary to secure such rights, if any, Berry may be entitled to.

No. 44. The American Electric Company, a corporation, was operating its plant and furnishing electric lights to the citizens of Frankfort for street and domestic purposes. The Howe Telephone Company, a corporation, was operating its plant in the same city furnishing the residents with telephone service. By the carelessness of one or both of the companies the wires of the companies became entangled and the electricity charged the telephone wire leading into the residence of T. A. Hand. Not knowing the telephone wire was charged with electricity, he took hold of it and was instantly killed. The only survivor of the decedent is an infant son James, 6 years of age, who has no guardian. Damage is wanted. Take all steps necessary to secure damages.

No. 45. Frank Foe, administrator of the estate of Richard Roe, deceased, sold and collected the proceeds of all the personal estate amounting to \$5,000 and without paying out any of the proceeds absconded. Decedent had no real property. John Brown and John Gray are on the administrator's bond. The decedent left as his only heirs his two sons, Joseph and Mike, both of whom are 21 years of age. The decedent at the time of his death owed but one debt that of \$1,000 to John Williams; Williams wants to collect his claim. Take all steps to collect it.

No. 46. John Doe and Richard Roe signed jointly a note to James Brown for \$5,000, dated January 1, 1915, due one year after date and bearing interest from date at the rate of six per cent per annum. Doe and Roe became insolvent and on January 1, 1916, each made a deed of assignment to James Smith, who qualified as such assignee and proceeded to settle the estates. He finds that Doe's estate, exclusive of Brown's claim, will pay 30 cents on the dollar on his individual indebtedness of \$4,000, and Roe's estate, exclusive of Brown's claim, will pay 60 cents on the dollar on his individual indebtedness of \$8,000. The assignee has all the funds in his hands and is taking no steps to pay any part of Brown's claim, who wants action filed. File the action and in the prayer ask specifically for such relief as Brown may be entitled to.

No. 47. J. W. Troy died intestate, leaving his will in the possession of M. O. Crist, whom he named as executor of the will; Crist refuses to deliver the will to the court for probate. The decedent left as his only heirs surviving him two sons, Joseph 21 years of age, and James 17 years of age. Joseph wants all necessary steps taken to have the will probated. Take such steps as may be necessary to have this done.

No. 48. The Southern College, a corporation, is conducting its college with John Doe as president, and having its fiscal business controlled by a board of directors composed of John Gray, William Smith, Thomas Jones, James Black and Frank Armstrong. The board of directors in regular session, May 1, 1920, contracted with Martin Oldham to operate a tannery near the residence of Forest Tillett for the purpose of making shoes to supply the European war sufferers as a charity to them. Tillett wants the operation of the tannery adjudged a nuisance and the operation prohibited. Secure for Tillett such rights as he may be entitled to.

No. 49. John Doe leased a lot to Roe with the stipulations that Roe might erect upon the lot a business house and engage in the business of merchandising, this lease to run for five years. This lot is located in a local option county. Immediately after the business house was opened for business, Roe commenced to sell whisky as a part of the business conducted on the premises. Doe is bitterly opposed to the use of whisky in any way, and is much incensed over the sale of whisky on the premises, and wants possession of the property if possible. Take all steps to secure such private right, if any, Doe may be entitled to.

No. 50. John Hay and James Hay own a lot one hundred feet square located in Lexington, Ky., on East Main street. They constructed a residence on this lot and extended it over one foot for the full length of the residence, on the adjoining lot which belongs to Richard Rye, and without his consent. John Hay is now a resident of St. Louis, Mo. James Hay is now confined in the Eastern Kentucky Lunatic Asylum. Take all steps necessary to secure the proper relief for Rye.

THIRD DIVISION.

Beginning with the second semester, the work of joining issues in contested actions based upon given statements of facts, is taken up and so planned as to cover a period extending to about March 15th. The court will be completely organized with the instructor presiding as judge, and one member of the class acting as clerk of the court, and another acting as sheriff. A complete set of necessary court record books are supplied and all proceedings are carefully noted of record. A sufficient number of cases will be selected and assigned so that each student will represent the plaintiff in one case and the defendant in another. Petitions will be filed, summons will be issued and returned as required under the Code of Practice and each case will be docketed by its proper title and docket number. The court will convene twice each week and the work will be conducted each day in the same orderly manner of a regularly constituted court. At each sitting the orders of the previous day will be read by the clerk and the court then proceeds with the call of the docket, for the purpose of hearing and determining all motions or other steps that may arise in the progress of making the issues. Each day steps will be taken as far as the student attorneys are able to prepare in their respective cases; and when any one case is finally disposed of, another is supplied in its place, put upon the docket and as before carried to the point of making the issue. This process keeps the court supplied with a full docket and gives the students constant practice in all phases of the preparation of cases for trial.

This kind of work gives the class the first experience of joining in the sharp contests of a court room over disputed questions of law and procedure. All debatable questions are determined by the presiding judge, who also instructs and lectures at points where he deems it necessary for the purpose

of giving a clear understanding of this important work of the practice.

The constant use of the code of practice in this connection, together with its use in the previous divisions, sufficiently trains the students to enable them to use it properly, when engaged in real practice.

After an action is begun there are many steps that may be taken by motion, in clearing away errors or imperfections in reaching the issue. The most important of these motions are here suggested and kept on the blackboard and their use explained while this work is being done.

General demurrer.

Special demurrer.

Amended pleadings.

Withdraw pleading.

Strike from files.

Verify.

Number lines.

Strike out.

Make more specific.

Paragraph.

Elect.

Dismiss for want of prosecution.

Reinstate on the docket.

Judgment.

Take petition for confessed.

Causes of action based upon the following statements of facts are suggested for practice in this division, but the instructor will change these or substitute others as may seem advisable:

No. 1. John Doe without apparent cause shot and killed Richard Roe. Roe's widow, Ann, is the only survivor of the family. File action for her.

No. 2. John Smith said to two different persons in the neighborhood, "Richard Jones is a thief." File action for Jones.

No. 3. John Brown who had committed no crime was arrested and put in jail by James Gray, who was no officer, and who proceeded without a warrant. File action for Brown.

No. 4. Joseph Black sold a horse to Thomas Tate, an infant, for \$1,000.00 and warranted the horse sound. He was unsound and worthless. Secure for Tate such relief as may be due him.

No. 5. William Tucker held a policy for \$2,000.00 in the New York Life Insurance Company. He died leaving distant kinspeople. The company refused to pay. Recover from the company the amount due.

No. 6. Frank Post's wife, Mollie, by the persuasion of Thornton Titus, ran away and lived with Tom Brown. File such action as may be allowed to Post.

No. 7. Thomas Webb, without permission, placed poison on Samuel Keene's farm to kill a dog, but killed a horse belonging to Keene worth \$1,000.00. File action for Keene.

No. 8. John Doe delivered a telegram to the Western Union Telegraph Co. to send to James Monroe in New York, notifying him of the serious illness of Monroe's mother. The telegram was not sent, and she died and was buried before Monroe knew of her sickness. File action for Monroe.

No. 9. John Zern, a cripple, was unlawfully assaulted and wounded by Peter Fogle. Zern appealed to John Brown, the sheriff, who was present, to protect him and prevent the assault, but Brown refused. File action for Zern.

No. 10. John Arnold, a licensed saloon keeper, without the consent of the father, sold whisky to John Bean, infant son of William Bean, causing the son to become drunk, from which drunkenness the son was sick in bed one month. File action for William Bean.

No. 11. John Davis threw a stone at a dog on the public highway. The stone missed the dog and struck Richard Lyon, knocking out his eye. Lyon was on the farm of Davis by permission. Davis knew Lyon was near and might be struck if the stone missed its mark. File action for Lyon.

No. 12. Met Clark on a dark night was riding horseback upon the Lexington and Midway turnpike road which road was owned and operated by the Lexington and Midway Turnpike Company, incorporated. His horse stumbled against a cart load of stone piled on the road, fell and broke his hip. The stone had been left there late in the afternoon in the cart to be broken and spread the next day. Nothing had been done to warn the public of the fact the stone was there. File action for Clark.

No. 13. Moses Henry was out on his farm with his wife, Mary Henry, when his wife saw Sarah Foley approaching them. The two women being unfriendly, Mary Henry said in a loud voice, "Sarah Foley is impure and has lied." Moses Henry said nothing. File suit for Sarah Foley.

No. 14. John Pope, engineer of the Louisville and Nashville Railroad Company, saw Will Slade lie down on the track in the freight yard in Lexington where there was no public travel allowed, but without warning ran the train over him and killed him. Slade left surviving him his widow, Mary. File action for damage.

No. 15. J. O. Graves is building a house and making all preparatitons to operate a soap factory on the lot adjacent to the residence of George Forrest. Take all necessary steps that will secure the rights of Forrest.

No. 16. Tobias Twinkle bargained in writing with Richard Roe whereby Roe sold him his farm containing 100 acres, bounded on the north by the lands of John Smith, on the west by the lands of John Jones, on the south by the lands of John White, and on the east by the lands of John Black. Twinkle paid the purchase price, \$5,000. Roe fails and refuses to convey the lands. File action for Twinkle.

No. 17. The Louisville and Nashville Railroad Company failed to blow its whistle or ring the bell when its train approached the Midway turnpike crossing, and ran over and killed John Ford. He left a widow, Molly, and a child, James, 6 years old. File action against the railroad company.

No. 18. J. T. White, running his automobile on the streets of Lexington at the rate of twenty-five miles an hour, ran over James Fisk, 12 years of age, son of Richard Fisk, and crippled him for life. File action for James Fisk.

No. 19. W. M. Orr told several persons that R. T. Hall had been reached by the Tobacco Trust and fixed, and now he will not aid the farmers in their fight upon the trust. File such action as Hall's rights will justify.

No. 20. J. W. Moss was walking on the sidewalk on Main street in Lexington, Ky., on a dark night, and fell through a cellar door and broke his leg. The door had been left open for four days by the property owner, William Russell. The door was where the Mayor, Tom Fite, and J. T. Jones and W. T. Fox, two city trustees passed every day. File such action as the rights of Moss will justify.

No. 21. The fiscal court of Fayette County, composed of J. Harmon, county judge, and O. L. Fry and S. T. Pope, county commissioners, ordered John Doe to remove his fence from the side of the public road. The fence was on the land of Doe, and in no way interfered with the rights of the county or the traveling public. Doe refused to remove the fence. The fiscal court then caused the sheriff, John Smith, to remove the fence over the protest of Doe. File action for Doe.

No. 22. C. T. Asher failed to repair his part of the partition fence between his farm and the farm of Chas. Hart, as required by law. The cattle belonging to John Smith entered the farm of Asher from the public road through an open gate, passed over said fence and committed trespass upon Hart's farm. File action for Hart.

No. 23. W. C. Payne, by written agreement, agreed to purchase Geo. Turner's farm three months after date for \$5,000, and executed his note to Turner for the purchase money, the title to be clear. Before the expiration of the three months Payne discovered that the title was defective. Secure such rights for Payne as he may be entitled to.

No. 24. The fiscal court of Fayette County, composed of J. Harmon, county judge, and O. L. Fry and S. T. Pope, county commissioners, by orders made in regular session, took possession of a strip of land belonging to James Farmer, and without his consent used and occupied it for a period of one year as a place for public speaking on the subject of agricultural education. Secure for Farmer such right as he is entitled to.

No. 25. John Sharp broke his leg and called Dr. James Blair to set the leg. When Sharp recovered he found his leg had been improperly set and was crooked. File action for Sharp.

No. 26. Thomas Wren was employed by A. T. Masters to operate a circular saw. The saw was warped, and when it started it cut off the hand of Wren. Masters knew the condition of the saw but failed to warn Wren that it should be fixed before starting it. The condition of the saw was not observed by Wren. File action for Wren.

No. 27. Sam Graves dug a ditch and ran the water from a creek on his farm on to the farm of Forrest Polk without his consent and thereby washed the land so as to make it unfit for cultivation or pasture. File action for Polk.

No. 28. T. C. Porter drew a bill on James Tice, of Cincinnati, for \$100.00 payable to John Smith, ten days after date. During the ten days Smith endorsed the bill in blank to J. T. Brown. Brown endorsed the same to V. S. Gray without recourse. Gray endorsed in blank to J. W. White. White presented the bill to Tice and Tice entered this upon the bill: "I accept this bill to the extent of \$50.00." The paper was duly protested. File the necessary action to secure the money for White.

No. 29. M. L. Moses rented a farm from T. S. Judy upon which a specified crop of tobacco was to be properly cultivated and matured by Moses, the crop when matured to be equally divided between the landlord and tenant. Moses put out the crop and cultivated it so poorly that only a half crop was

raised. File action to secure for Judy such rights as he may be entitled to.

No. 30. C. O. Dale sold and conveyed a house and lot to Morris Fall, but at the time of the sale John Johnson was occupying the house as a tenant. Johnson refuses to give possession of the house. By the terms of the contract Dale was to deliver peaceable possession of the house to Fall. File action to secure such rights as Fall may be entitled to.

No. 31. William Corn, 18 years old, son of John Corn, intentionally shot and killed a horse belonging to C. M. Armstrong, which horse was worth \$250. File action to secure such rights for Armstrong as he may be entitled to.

No. 32. John Die sold J. W. Martin a tract of land for \$5,000 cash and falsely represented that there was on the farm a never failing spring of water, which supplied sufficient water for all the live stock that might be kept on the farm. When summer came the spring dried up and made the farm much less valuable than it would have been if the spring was as represented. File action to secure such rights, if any, Martin may be entitled to.

FOURTH DIVISION.

After using about six weeks' time in the practice of filing suits and experiencing all the procedure up to the joining of issues as heretofore set out, the practice court will take up the work of handling many cases in which important questions of law are involved. For the purpose of this work, the members of the class will be divided into groups of three members each, and each group will be given a case, one member acting as the presiding judge, and the other two will act as the attorneys in the case, one on each side. No pleadings will be filed, but the law of the respective cases will be thoroughly looked up in the law library by each member of the group. When the case is ready to be heard, the judge will preside and hear the arguments of the attorneys for their respective sides. These arguments must be made from notes and other data the attorneys may have collected. After the arguments have been made, each attorney will prepare a brief for his side of the case. A great deal of attention will be paid to the preparation of the briefs, and the students will be instructed on the work of brief making, if not already acquainted with that kind of work. The briefs will be filed with the judge and he will prepare a written opinion in the case. The opinion and the briefs will be filed with the instructor and by him kept in the proper files for future reference. After the first case has been disposed of in any group, one of the persons who acted as attorney will act as judge in the next case and the first judge will become an attorney. A third case will also be worked out by each group so as to give experience to each member as judge, and also twice as attorney. Carefully prepared cases should be used in this work which involve difficult questions of law, so as to require the student to do a great deal of careful work of investigation and analysis of the law. Following is a selection of cases that may be used, but in the main the cases should consist of such undecided ques-

tions pending before the Kentucky Court of Appeals, that the instructor may be able to secure. The handling of such cases in this court brings about the best possible efforts on the part of the students.

No. 1. John Doe, a coal dealer, sent a cart load of coal to the residence of Richard Roe. The driver, a negro boy, in driving into the back yard, ran the cart wheel against a gate post. Without backing off the post he commenced to beat the horse unreasonably, which caused the horse to lunge forward and break his trace chain. When the chain broke a piece of one of the links flew and knocked out the eye of Samuel Ray, who was sitting on his porch about twenty feet away. Can Ray recover damages of Doe?

No. 2. John Smith was driving a team over a bridge newly constructed by the Fayette Fiscal Court, on the public highway. The bridge gave way and precipitated the team of horses to the creek below, killing them. The timbers that gave way were put in by order of the fiscal court, were faulty when put in, and no examination of same was made by any one. Can Doe recover damages?

No. 3. George Sales paid for a street car ticket at the corner of Limestone and Main streets in Lexington, Ky., with the understanding and agreement with the Street Car Company that the purchase of this ticket would take him to the University of Kentucky around by the fair grounds, and that he would make two transfers, each time transfer ticket would be given from one car to the next. He got a transfer to the second car, got on the second car and asked for a transfer, and the conductor said: "I will give it to you in a minute." He reached the third car but the conductor had not given him the transfer to the third car. Nothing was said by either the conductor or Sales after the request for the transfer was made. The conductor on the third car demanded the car fare of Sales; he refused to pay and stated the facts as above related. The conductor not being satisfied, put him off the car. Can Sales recover damages?

No. 4. Joseph Adams filed action against the firm of Pennington & Rule in the Boyd Circuit Court for wrongful attachment. His petition contained two counts, and each count stated a separate cause of action. Under the first, he sought actual damage under the statute. Under the second, he sought damage to his credit and character under the common law. Plaintiff was required to elect on motion of defendant, and did elect to proceed under the first count. He afterwards filed a separate action alleging the same facts contained in the second count of the original petition. Can he maintain both actions?

No. 5. Thomas Hays is using a private road over the farm of George Rice. It is conceded that it has been used as a private passway for ninety years. A letter has been found which was written by the original patentee of the land over which the passway is located, in which the writer says that he is willing that the passway may be kept open for travel until he sees fit to close it. The letter was dated 100 years ago. There are no other facts. It is conceded that this is the same passway now in use. All of the many conveyances beginning with the patentee down to the present holder have contained the usual stipulations making a good title with all privileges and appurtenances. Can the passway be closed?

No. 6. William Gray was sitting on a mill dam in Barren River fishing. Frank White was in the river hunting for pearls. White found a muscle shell, broke it open and examined the muscle, but discovered nothing. Gray asked White to throw him the muscle that he might use it as bait on his fish hook. White threw the muscle to Gray, who cut the muscle in pieces and found in it a fine pearl valued at \$500.00. Did the pearl belong to Gray?

No. 7. James Foy conveyed by deed with general warranty a steamboat landing, including wharf and privileges, to Smith Young at the mouth of Mill Creek on the Ohio River for the purpose of conducting a ferry business and guaranteed a safe landing place for twenty yards. Foy owned the land on both sides of the point, where the steamboat landing

was located. The conveyance was made in 1915. The creek washed out the bank where the landing was located, and Young moved the landing down the river on Foy's land far enough to get a safe location for making all landings. Foy is dead and his son, James, the only survivor, claims that Young is confined to the specific boundary described in the original conveyance, and on which the landing was located. Is James Foy correct in his contention?

No. 8. The city of Jackson built a bridge over the Kentucky River, which river divides the city into two parts. The city leased the bridge to the county of Breathitt, and the county is collecting tolls of those who use the bridge. The bridge floor, while used by the county, was permitted to become unsafe and Tom South, in going over, fell through and broke his leg. Is the city of Jackson responsible in damages to South?

No. 9. John Doe and Richard Roe were brakemen on the L. & N. R. R. Co.'s freight train, and it was the duty of each to couple and uncouple cars, when the train stopped at a station. The train stopped at Lexington and Roe told Doe that the conductor said for him (Doe) to step in between two cars and couple them. Doe obeyed, and the engineer, not knowing Doe was between the cars, caused his engine to give a sudden rush by which Doe was thrown off his balance and lost his hand. The conductor gave no orders to the engineer and all he told Roe was this, that the cars mentioned ought to be coupled. Can Doe recover damages of the Railroad Company?

No. 10. J. M. Slade owns a farm upon which a spring is located, and the water flows over his farm, and through the partition fence onto the farm of Wm. Toles and runs on Toles' farm about twenty feet, then back to Slade's farm, and then flows into the river from Slade's farm. The water in very dry times does not flow so far as Toles' farm. Slade dug a large pool on his side of the fence and collected a vast quantity of water, thereby checking the water under ordinary conditions

from flowing upon Toles' land, where it was used for stock water. The pool was made for the purpose of furnishing a bathing place in summer and a skating place in winter for the neighboring school children. Can Toles recover damages?

No. 11. S. O. Brown met Richard Phelps and without cause attacked him. They fought with their fists, and after a few minutes Phelps drew a knife. Brown threw a stone at Phelps and then he (Brown) commenced to back away and said, "Look out, or I will do you up," but made no demonstrations. Phelps rushed upon him and cut him so that he was crippled for life. Can Brown recover damages?

No. 12. University of Kentucky is a corporation, as shown by the provisions of the Kentucky Statutes, and in said statute, provisions are made for the appointment of certain persons as students to the university who shall pay no university fees. For causes satisfactory to the faculty of the university, can one of such students be arbitrarily suspended from the classes of the university without giving the student a hearing? Assuming the law constitutional.

No. 13. J. Floyd joined a mob to go to the jail of the county and release a murderer confined in the jail. He knew the jail was guarded for the purpose of preventing the release of the murderer. He, together with his associates, fired on the guards and wounded one of them. The wounded guard, whom it was conceded was wounded by the shot fired by an associate, fired a return shot at Floyd, who was advancing, missed him and wounded Frank Gray, an innocent bystander. Can Gray recover damages of Floyd?

No. 14. Thomas King owns a farm of 100 acres on which he is breeding and preparing for market a very fine variety of pheasants. S. T. Kelly is the owner of a biplane, in which at intervals he flies over the farm of King at a distance in the air of one mile above the farm. The sight of the machine in the air so disturbed the birds that some of them flew away from the farm and were lost, others became so frightened that

they were valueless. Can King by injunction prevent the acts of Kelly?

No. 15. John Henry in an altercation with A and B at one shot killed both A and B. Henry was charged and indicted for killing each one of them on separate indictments. He was tried and acquitted of the killing of A. The proof shows that A and B were abusing Henry, and each at the same time made an attack upon Henry, the two advancing in a threatening attitude, when Henry fired the shot. Henry was acquitted of the crime of killing A. Can Henry plead former jeopardy or autrefois acquit on the second trial, the facts being the same as in the first trial?

No. 16. The Louisville & Nashville R. R. Co. is operating its line of road between Lexington and Cincinnati. Near a station in this county Thomas Eads connected his residence with a tenant house by telephone, and the wire was put over and across the railroad track about twenty feet above the top of the cars when passing, and was in that position for two years. A storm blew down one of the phone poles and allowed the wire to sag so that it hung about four feet above the top of the cars as they passed. This condition continued for ten days when Joe Hall, a brakeman on a freight train, standing on the top of a freight car as it ran by, was dragged off by the wire and killed. It is not claimed that the railroad company actually knew anything about the condition of the wire. Can Hall's personal representative recover of the railroad company?

No. 17. John Doe, who resides in a city of the second class in this state, lives in a residence section in which no business houses of any kind exist. The citizens of that section are opposed to the erection of any kind of business house or the conducting of any kind of mercantile business in the section. Sam Hill, who owned a lot in that section, applied for a permit from the proper authorities to build a house in which to conduct a grocery store. It was refused. Immediately the city commissioners passed an ordinance prohibiting

the building of such a house and conducting such a business in that section. Can Hill force the proper city authorities to grant a permit to build the house in which to conduct the business?

No. 18. Two indictments were returned against John Doe, each charging the offense of carrying a pistol concealed. Both indictments were found on the same day, one charging that the pistol was carried concealed on April 1st, and the other indictment charging that it was carried concealed on April 2d. Both cases were called at the same term of court and on the same day. In the first case he was convicted, sentenced to jail, fined and disfranchised under the act of the Legislature passed in 1914. The second case being called and the defendant being found guilty, can he be sentenced to the penitentiary under the provisions of the same act, which makes the second offense a felony?

No. 19. J. T. Samuels filed an action for damage against John Fields for injury to a lot of his live stock and claims \$500 damages. The only property that Fields has subject to execution is four horses, which he is about to ship to another state. Can Samuels attach the horses so as to secure a judgment he may obtain against Fields in the damage action?

No. 20. University of Kentucky is controlled by a body of trustees appointed by the governor of the state upon the approval of the Senate, which is all set out in the statute law of the state under title of University of Kentucky. Under the provisions of that law, is a trustee of the University of Kentucky a state officer?

No. 21. By proceedings in the county court John Forrést was adjudged a lunatic and J. O. Dale was appointed and qualified as his committee. There was no judgment directing the confinement of the lunatic in a public lunatic asylum. Can the committee arbitrarily confine the lunatic in such an asylum?

No. 22. F. S. Jones contracted with Brown to repair a house, and Brown contracted with Smith to do the work, and Smith contracted with Dunn to furnish the materials. The

employe of Dunn brought a quantity of stone to the house and placed it on the road by which C. S. Gay's carriage was overturned. Can Jones be held answerable for the damages to Gay?

No. 23. Sarah Quickly is the keeper of a large boarding house in Lexington, which until recently has been exclusively patronized by employes of the Louisville & Nashville Railroad Company. Last month the company's superintendent caused a notice to be placed where official notices are usually put, which read as follows: "The company does not desire the services of any persons continuing to be boarders at the 'Quickly Boarding House.'" As a consequence she has lost all her old boarders and has not succeeded well in obtaining new ones. Can she recover damages of the company?

No. 24. Sarah Jones during her lifetime kept an account book, certain entries in which were headed by the name of her daughter, "Nancy," followed by the words, "Riggs National Bank Stock." The entries showed receipt of dividends, which were balanced by statement of expenditures on behalf of her daughter. Sarah Jones died in 1915, and her administrator has declined to deliver the above stock to Nancy Jones. Can Nancy Jones recover the stock?

No. 25. Felix Pyatt, being owner of all of lot No. 70, block 1, established a drain from the east half of the lot over the west half and terminating in Rock Creek. The drain is not essential to the enjoyment of said east half, and is so covered that its existence could only be discovered by a critical examination. In 1915 Pyatt conveyed the east half of said lot "with its appurtenances" to M. J. Rankin who had no actual knowledge of the drain. At a later period Pyatt conveyed the west half to George Hines, who did not know of the existence of the drain at the time of his purchase, and is now closing it up. Can Rankin enjoin Hines from closing it?

No. 26. William Mason, a merchant, keeps an account at the Dime National Bank, which bank has discounted his note for \$5,000. Before the note matured Mason made an assign-

ment for the benefit of his creditors, having in the bank a deposit of \$1,000. James Bright, the assignee, sues the bank for the deposit; the bank claims it has the right to set off the deposits against the unmatured note. Is the bank right in its contention?

FIFTH DIVISION.

After completing the foregoing work the class will then proceed to the trial of common law cases before juries.

For this purpose actual cases are obtained for the trials, so that all proceedings will be regular, and the evidence introduced not imaginary but real. This can be easily done if the instructor is active in preparing in advance for such cases. He can find transactions about the university or in the immediate community for this purpose, and make the necessary arrangements for the attendance of litigants and witnesses. When a case is arranged, members of the class will be assigned as counsel on each side of the case and all pleadings prepared, filed, and all other necessary steps taken until issue is joined. When issue is joined, a time will be set for the trial of the case. All proceedings will be conducted with the same regularity required in a legally constituted circuit court. Juries will be made up of members of the senior class. The case when ready for trial will be stated to the jury and evidence heard. The instructor presiding as judge will hear and determine all disputed questions of law and procedure that may arise during the progress of the trial. When any such questions are raised and decided, the reasons for the decisions must be explained to the class. In order to make the work complete in detail, as the trial proceeds, a stenographer will be present, so as to make complete record of the testimony, note all exceptions, avowals, the treatment of depositions and all other steps that properly pertain to the trial.

When the evidence is in, instructions to the jury will be prepared by counsel on either side and offered. The court will consider the proposed instructions and determine what instructions will be given to the jury, whether offered by counsel or prepared by the court, and all others will be excluded.

When the jury is instructed, arguments will then be made by counsel, verdict returned and judgment rendered. The de-

feated party will take the necessary steps to prosecute the case to the Court of Appeals. All steps leading up to that court will be taken, such as filing grounds and motions for new trial, filing schedule, making out the record for appeal, filing statement in the Court of Appeals and other steps that the law requires. The record will be filed in the Court of Appeals, the case briefed, and arguments will be made before the court, which will be made up of judges selected from the members of the senior class.

Several cases, including at least two criminal cases, reported on indictments found by a grand jury made up of law students will be tried out in this way. The usual class period will not give sufficient time to try such cases so that afternoons and evenings will be selected for this purpose.

This practice work not only trains those who are acting as counsel in the case, but the juries being made up of members of the senior class, and all other members of that class being required to attend all trials, they become well acquainted with the procedure. After the first trial other members of the class are selected as counsel so that each member of the class will serve in that capacity. This can be done by assigning as many as two or more counsel on each side of the case, and requiring each one to do a material part of the work in the trial. As this work proceeds careful instructions will be given to impress upon the class the importance of exercising great care and judgment in the preparation and management of the case. The value of this feature cannot be overestimated in securing satisfactory results in a trial before court and jury.

CONCLUSION.

This course in practice court work will be completed immediately before graduation, and the members of the class will expect soon thereafter to begin the practice of law. Before final dismissal, a short course of lectures will be delivered which relate to the personal side of the lawyer's career. These lectures will include comments upon the value of a well-kept office and the many details in connection therewith. The value of promptness and strict attention to all matters intrusted to him, together with recommendations as to the systematic handling of same. Comments will be made upon his duties in his relation to all persons, whether in a professional way or otherwise. In this connection it will be insisted that more will be expected of the lawyer than the mere performance of his professional duties. By reason of the high character of his training and the prominence of the legal profession, he will be expected to become a leading citizen and an able supporter of all that counts for good in whatever place he may locate.

It should be the ambition of every young lawyer to become a leader in his profession, but he must understand that all lawyers can not reach so high a position. Every lawyer worthy of the name may become a credit to his profession, and thus feel that his efforts have not been in vain. But the career of no lawyer in this day and time will be or should be regarded a success unless he performs some part in building up civic affairs. In this, the field is broad and it offers many opportunities, and if the life of the lawyer is made worth while this field should not be overlooked. Every lawyer can not become great in his profession, but every lawyer properly trained can become a good lawyer and a useful citizen, and thereby enjoy the esteem of those about him and also reflect credit upon his profession.